Opinion 63-71-L
R-273
May 29, 1963

REQUESTED BY: CLYDE KILLINGSWORTH, Superintendent
Motor Vehicle Division

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Is a person engaged in the business of towing wrecked and disabled motor vehicles for hire liable to pay a license tax upon the gross receipts of his operations despite the fact that such person is not required to obtain a Certificate of Convenience and Necessity to operate as a common carrier from the Arizona Corporation Commission?

ANSWER: No.

A person engaged in the business of towing wrecked and disabled motor vehicles is a private motor carrier. A.R.S. § 40-601(A)(8) as amended. The Supreme Court has stated that this section is not unconstitutional because it limits the powers granted to the Corporation Commission to regulate common carriers using the public highways. Arizona Corporation Commission vs. S & L Service, Inc., No. 7617 (May 2, 1963). The Court held that there is no constitutional requirement that a carrier be certificated to perform functions that can be regulated by statute. The legislature has regulated the business of towing disabled vehicles by classifying this business as a private carrier business.

> "Prior to passage by the legislature of A.R.S. § 40-601(A)(8) in 1960, providing for the towing of disabled vehicles by tow trucks, this court in interpreting the old statute which made no reference to towing of disabled vehicles by tow trucks stated in the case of Killingsworth v. Morrow, 83 Ariz. 23, 26, 315 P.2d 873 (1957):

> ' . . . Certainly, if one whose principal business is that of servicing and repairing cars tows the same for the purpose of repairing or servicing, he would be transporting them for bailment or in furtherance of his principal commercial enterprise and would thereby qualify as a private carrier.'

"The opinion when on to say, however:

> '. . . If any portion of the receipts upon which this tax was levied was derived from towage charges not performed in the furtherance of or incident to his garage business but separate and apart therefrom, such receipts would be taxable as income derived from transporting property for compensation as a common carrier or contract carrier.'

"Subsequent to the Killingsworth decision, the legislature in 1960 amended the statute to the effect that 'towing of disabled vehicles by tow trucks operated in connection with automobile repair or service business or a wrecking yard shall be deemed to be incidental to the commercial enterprise, and the operator thereof shall be deemed to be a private motor carrier when engaged in such operations.'

"We are of the opinion that under the provisions of A.R.S. § 40-601 (A) (8) as amended, the S & L is a private motor carrier." Arizona Corporation Commission vs. S & L Service, Inc., supra.

The Supreme Court has determined that A.R.S. § 40-601 (A) (8) as amended defines a person towing disabled vehicles to any automobile repair or service business, not necessarily his own, to be a private carrier. The

license tax in question, A.R.S. § 40-641 as amended, applies to common motor carriers and to contract motor carriers only. Private carriers are not subject to the tax and since a person engaged in the business of towing wrecked vehicles is a private carrier, he is not subject to the tax.

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